

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22739 of 2006

06.11.2006

Between:

M/s.Vijaya Bhavani Constructions (P) Ltd., represnted by its Manager,
Sri M.Karuna Sagar, S/o.M.Rama Rao

..... PETITIONER

AND

The State of Andhra Pradesh, rep. by its Secretary (Mines),
Secretariat, Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.22739 of 2006

ORDER:

M/s.Vijaya Bhavani Constructions Private Limited, the petitioner herein, is engaged in the business of construction of projects, dams, roads, buildings and other engineering works on turnkey basis. It was awarded the contract for work of four laning of Pune–Hyderabad section of N.H.9 from KM 493/0 to 524/0 as a B.O.T. model. So as to execute the said work in a time bound manner, the petitioner approached the third respondent for grant of quarry lease for stone and metal over an extent of six (6) hectares in survey No.738/1 of Lakadaram village of Patancheru Mandal in Medak District. The same was granted by the third respondent by proceedings dated 02.11.2004 for a period of ten (10) years for the period from 03.11.2004 to 02.11.2014. The petitioner executed a lease deed in Form-G and obtained work permits. The land leased out to the petitioner also including an extent of two hectares, which was leased out to the fifth respondent society for building stone. Be that as it is, the petitioner allegedly set up a cover in the leased area and was quarrying. The fifth respondent as noticed obtained quarry lease over an extent of two hectares in survey No.738 of Lakadaram village for a period of ten years. However, on the ground that the fifth respondent committed certain breaches, the third respondent determined the lease by proceedings No.1514/Q/2000, dated 06.8.2002. The fifth respondent filed a revision petition before the Government *inter alia* contending that the fifth respondent could not operate the quarry due to objections from the local leaders and, therefore, it could not rectify the breaches pointed out by the Directors. While the revision petition was pending, the petitioner herein got impleaded in revision and raised objections. The Government, after hearing both the parties, passed orders, vide the impugned memo dated 04.10.2006 allowing the revision petition taking a lenient view and with a view to provide employment to the poor members of cooperative society. This order is assailed by the petitioner.

Learned Counsel for the petitioner vehemently contends that there was inordinate delay on the part of the fifth respondent in filing revision petition and, therefore, the Government ought not to have entertained the revision petition. Secondly, he would urge that the impugned order is vitiated by improper exercise of power and that the ground on which the revision petition was allowed is irrational. Thirdly, he would urge that after obtaining quarry lease for six hectares, the petitioner spent huge amounts and quarrying for building stone for

utilizing in the project of widening the National Highway and if the two hectares land is excluded from the petitioner's leased area, public interest would suffer. **Opposing** the case, learned Government Pleader for Mines and Geology submits that the exercise of power by the Government is proper and no interference is called for.

Rule 35-A of A.P. Minor Mineral Concession Rules, 1966 (the Rules) reads as under.

35-A. Revision:- The Government may either *suo motu* at any time or on an application made within ninety days, call for an examine the record relating to any order passed or proceeding taken by the Director, Joint Director, Deputy Director or Assistant Director under these rules for the purpose of satisfying themselves as to the legality or propriety of such order or as to the regularity of such proceedings and pass such order in reference thereto as they think fit:

Provided that no order adversely affecting any person shall be passed under this rule unless such person has been given an opportunity of making his representation.

(Explanation not extracted)

The Rule confers the revisional power on the Government *suo motu* or on an application made. When the power is exercised *suo motu* there is no time limit whereas a person seeking to file revision has to do so within ninety days. Though the power flows from the same statutory provision in matter of limitation, situation is different. As noticed hereinabove, the fifth respondent filed a revision petition before the Government, but the same as seen from the impugned order is dated – nil. Be that as it is, it was always permissible for the Government to reject a revision petition filed belatedly. Once the Government decides to entertain the revision petition for any of the grounds congenial for exercise of such revisional power, the application whenever it is made should be treated as one taken up *suo motu*. Therefore the submission of the learned Counsel that the application filed by the fifth respondent, at belated stage, would not enable the Government to exercise power under Rule 35-A cannot be accepted. A reference may also be made to Rule

35-C of the Rules, which reads as under.

35-C. Application for appeal/revision:- Any appeal against any order passed by the Assistant Director or the Deputy Director or Joint Director filed before the Director under Rule 35, of revision against any order passed by the Director, Joint Director, Deputy Director or Assistant Director filed before the government under Rule 35-A of these rules shall be made in triplicate in Form J within the period specified in Rule 35 or 35-A of these rules, along with Treasury receipt shown that the fees specified in Rule 35-B of these rules has been paid into a Government Treasury, or in any Branch of State Bank of India/Hyderabad conducting the Treasury business to the credit

of the head of account is specified therein.
(provisions not extracted)

This Court need to notice important aspect with reference to Rule 35-C. The proviso to sub-rule (1) of Rule 35-C enables the Government to entertain a revision on application after the period of ninety days and the person in whose favour quarry lease granted subsequently for the same area has to be impleaded in the revision. This only means that whenever a quarry lease or mining lease is granted to a person in respect of such area to which lease was granted earlier but determined for some reason or the other, an appeal/revision is contemplated by the earlier lessee. As a necessary corollary, whenever original lessee succeeded in the appeal/revision, the subsequent grantee has to necessarily forego the right to win mineral.

Rules 12(2) and (3) of the Rules contain order of preference in which applications for grant of quarry lease for the same land are to be considered by the competent authority. The same reads as under.

12. Grant of lease:-

(2) Whenever more than one application are received for grant of a quarry lease for minor minerals except sand, granite useful for cutting and polishing and marble and also the minerals specified under items at Sl.No.1 to 3(a) under Schedule-I to Rule 10 the Deputy Director shall dispose of the applications in order of preference specified below:-

- (i) Applications of Government Department and Government Corporations and Companies;
- (ii) Applications of Labour Contrary Cooperative Societies;
- (iii) Applications of unemployed persons who possess any recognized qualification in Geology, Geophysics, or Mining Engineering or any other allied subjects;
- (iv) Other applications;

(3) The quarry lease applications for minor minerals under items at Sl.No.1 to 3(a) of Schedule-I to Rule 10 shall be disposed of by the Deputy Director in order specified below:-

(1) Applications of Societies of Professional/(local) Traditional stone cutters (waddaras).

(2) Crusher owners who do not have quarries.

(3) Unemployed youth holding Geology degree, and businessmen who propose to set up crushers.

(4) Others:

(provisions not extracted)

Rule 12(2) makes it clear the top priority is to be given to Labour Contract Cooperative Societies subject however to priority being accorded to the applications made by the Government or quasi-Government agencies. Subrule (3) of Rule 12 is more emphatic and pointed in giving preference to the applications of

professional/traditional stone cutters (waddaras) (like fifth respondent society), and obligates the Deputy Director to necessarily prefer the applications of waddara societies in the matter of granting quarry lease for building stone, rough stone/boulders, road metal & ballast, dimensional stone used for kerbs & cubes and items at Serial Nos.1 to 3(a) of Schedule-I of Rule 10 of the Rules. Therefore, when the lease was granted on 06.8.2002, fifth respondent was presumably preferred as it is a waddara cooperative society. When the petitioner herein applied for grant of lease for six hectares of land in survey No.738, the land which was granted to fifth respondent was also part of it. Therefore, when the revision petition was filed by the fifth respondent, the petitioner herein got impleaded. This is for the reason that as per condition No.22 of the appendix to the quarry lease dated 21.1.2004 the petitioner was bound by the Rules. Now that the revision petition of the fifth respondent was allowed restoring lease to them, petitioner cannot have any grievance. The lease was granted to the petitioner subject to the determination of the rights of the fifth respondent and secondly even after the impugned order, the petitioner still has four hectares of the mining area. The Government by passing the impugned order not only was aware of Rules 12 (2) and (3) of the Rules, but also their duty to be guided by the directive principles of State policy for achieving social justice. Initially, the petitioner predated the leased land of the fifth respondent, which now has been restored to them without expressing hardship to the petitioner. Therefore exercise of power by the Government cannot be faulted.

The writ petition is devoid of merit and is accordingly dismissed.

(V.V.S.RAO, J)

November 06, 2006

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